

# HOUSE . . . . . No. 1601

---

By Mr. O’Flaherty of Chelsea, petition of Eugene L. O’Flaherty relative to workers’ compensation benefits. Labor and Workforce Development.

---

## The Commonwealth of Massachusetts

---

In the Year Two Thousand and Five.

---

AN ACT RELATIVE TO WORKERS COMPENSATION BENEFITS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1     SECTION 1. Subsection 1 of section 1 of Chapter 152 of the  
2     General Laws, as appearing in the 2002 Official Edition, is hereby  
3     amended by adding the following to the end of the first paragraph  
4     thereof:—

5     If the employee returns to employment after an injury covered  
6     by this chapter without a lump sum settlement and earns less than  
7     the pre-injury wages and such decrease results from the prior  
8     work related injury, the prior average weekly wage shall be  
9     applicable to any subsequent period of incapacity, whether or not  
10    said incapacity results from a new injury or subsequent injury as  
11    set forth in section thirty-five B.

1     SECTION 2. Section 13A of said chapter 152, as so appearing,  
2     is further amended by striking out subsection 4 and inserting in  
3     place thereof the following subsection:—

4     (4) Whenever an insurer or self-insurer files a complaint to  
5     reduce or discontinue an employee's benefits, and the insurer or  
6     self-insurer withdraws such complaint prior to five days before a  
7     hearing pursuant to section eleven, or whenever an insurer con-  
8     tests a claim for benefits on a form prescribed by the department,  
9     other than the initial liability claim as provided by subsection (1),  
10    by failing to commence the compensation requested within  
11    twenty-one days of receipt of such claim, and is later required to

12 pay benefits following a conference pursuant to section ten A on  
13 said claim, the insurer or self-insurer shall pay an attorney's fees  
14 to the employees counsel in the amount of seven hundred dollars,  
15 plus all necessary expenses. However, if the insurer or self-  
16 insurer withdraws its complaint within five days of the date set for  
17 conference, the fee due shall be three hundred fifty dollars, plus  
18 payment of all necessary expenses. Any fee payable under this  
19 paragraph shall be reduced by half when the attorney failed to  
20 appear at a scheduled conciliation and such failure was not  
21 beyond the control of the attorney.